

Date: July 6, 2016

# City of Beaverton REQUEST FOR PROPOSALS

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## **Professional Engineering Services for MENLO DRIVE SIDEWALK IMPROVEMENT PROJECT**

### **Using a Qualified Based Selection Process**

**Solicitation #3110-16B**  
**DATE & TIME PROPOSALS ARE DUE:**  
**August 1, 2016 at 2:00 PM**

A mandatory pre-proposal conference will be held on July 18, 2016 at 10:00 a.m.,  
City Council Chambers at the  
Beaverton Building, 12725 SW Millikan Way, Beaverton, OR 97076

Envelope(s) shall be sealed and marked with Project Title and Solicitation Number.  
Respondents must submit one (1) original and one (1) digital (CD) complete copy of  
their proposal.

This document is available in alternate formats, such as large print, audiotape,  
oral presentation and electronic format. To request an alternate format, call  
the City of Beaverton at 503-526-2228 or TDD 503-526-2506.

**SUBMIT PROPOSAL TO:**

City of Beaverton  
Purchasing Division, Fourth Floor  
12725 SW Millikan Way  
Beaverton, OR 97005  
503-526-2228



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## LEGAL ADVERTISEMENT

**CITY OF BEAVERTON  
REQUEST FOR PROPOSAL #3110-16B  
QUALIFICATIONS BASED SELECTION  
PROFESSIONAL SURVEYING, ENGINEERING, BIDDING, AND CONSTRUCTION  
ADMINISTRATION SERVICES FOR MENLO DRIVE SIDEWALK PROJECT**

The City of Beaverton is seeking sealed proposals from qualified consultants to provide surveying, engineering, bidding, and construction administration services related to the construction of new sidewalk on Menlo Drive from approximately Allen Boulevard to Fairmount Drive. Consultants are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.

Sealed proposals will be received until 2:00 pm on August 1, 2016, at the Finance Utility Billing Counter on the fourth floor of the Beaverton Building, City Hall at 12725 SW Millikan Way, Beaverton, Oregon 97005, Attention: Terry L. Muralt, CPPB, Purchasing Agent. There will be no formal opening. Facsimile proposals will not be accepted. Proposals will not be accepted after the stated opening date and time. Late proposals will be returned to the vendor unopened.

Solicitation packets may be downloaded from <http://apps.BeavertonOregon.gov/Bids/> or may be obtained at the address listed above or by calling the Bid Line at 503-526-2228.

A **mandatory** pre-proposal conference will be held at 2:00 pm PST on July 18, 2016 at Beaverton City Hall in connection with this procurement. To assist in the productivity of this meeting, please email questions prior to the conference to [tmuralt@BeavertonOregon.gov](mailto:tmuralt@BeavertonOregon.gov), by 5:00 pm on July 14, 2016 with subject title: Menlo Drive Sidewalk Improvement Project. Additional questions that consultants have during the procurement process will be accepted up to 5:00 PM on July 22, 2016 and will be posted on the city website as Frequently Asked Questions.

Proposers are required to certify non-discrimination in employment practices in accordance with ORS 279A.110(4), and identify resident status as defined in ORS 279A.120(1). Pre-qualification of proposer is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and Beaverton's Contract Review Board Policy.

The City of Beaverton reserves the right (1) to reject any or all proposal not in compliance with public bidding procedures, 2) to postpone award of the contract for a period not to exceed ninety (90) days from date of proposal opening, (3) to waive informalities in the proposals, and (4) to select the proposal which appears to be in the best interest of the City.

PUBLISHED: Daily Journal of Commerce  
DATE: July 6, 2016

## **SECTION 1: BACKGROUND AND SCOPE OF WORK**

### **1.1 Background**

The Beaverton City Council approved a major update to the Beaverton Community Vision action plan in February 2016. The plan identifies community-inspired actions that the city and a wide range of community partners will work on over the next decade. The 104 actions in the updated plan are based on outreach by the volunteers of the Visioning Advisory Committee (VAC). Action #48 is "Install safe sidewalks and pedestrian lighting citywide".

This fiscal year the City Council made sidewalk improvements one of their top ten priorities.

As a result, the Capital Improvement Program Citizen Advisory Committee (CAC) was directed to recommend one new sidewalk construction project in the FY 2016-17 Capital Budget. The CAC held a workshop to review all streets under the jurisdiction of Beaverton that currently do not have sidewalk. The CAC recommended Menlo Drive because:

- Menlo Drive provides an important connection to schools, commercial centers, employment, parks, religious institutions, and transit
- Menlo Drive has greater pedestrian and vehicle traffic volumes than other candidates
- Surrounding households have relatively low incomes and have low rates of car ownership compared to other areas of the City

On May 24, 2016 the City of Beaverton Budget Committee recommended a new sidewalk construction funding program beginning in FY 2016-17. The City Council considered and approved the proposed FY 2016-17 budget on June 21, 2016.

### **1.2 Scope of Work**

#### **CIP PROJECT NO. 3106A – MENLO DRIVE SIDEWALK PROJECT**

EXTENT: Allen Boulevard to Fairmount Drive

TYPE OF WORK: Construct new sidewalk(s) on Menlo Drive (mostly on one side) and associated street and drainage improvements

DESCRIPTION: The City of Beaverton is seeking proposals for a professional engineer or firm to provide preliminary engineering services needed to facilitate the design and construction of the Menlo Drive Sidewalk Improvement Project. This project is a pending construction project. This project will result in an ADA compliant sidewalk (mostly on one side), planter strip where feasible, access ramps and other associated street and drainage facility changes.

## SPECIFIC SCOPE OF SERVICES

TASK 1: Project Management

TASK 2: Project Orientation/Data Collection

TASK 3: Preliminary Engineering of Three Alternatives

TASK 4: Final Engineering

TASK 5: Right of Way Acquisitions Services

TASK 6: Bidding Assistance/Construction Administration

TASK 7: Construction Staking

TASK 8: Record Drawings

TASK 9: Extra Work as Authorized

### **TASK 1: Project Management**

Provide project management, coordination and direction of the design team to complete the project as described herein. Project Management will generally consist of establishing quality control program, supervision of project schedule and budget, public information, coordination with City and project team, and overseeing technical work efforts and deliverables.

- 1.1 **Project Administration.** Provide coordination with City's Project Manager, other agency staff as required and project design team. Prepare status reports, invoices and maintain project files.
- 1.2 **Project Schedule.** Prepare a design schedule for City approval. The schedule will define the anticipated process for project delivery, including significant project milestones. The schedule will be used for planning and monitoring progress.
- 1.3 **Meetings.** Periodic team meetings with City Project Manager as well as meeting with Project Stakeholders to review project development.
- 1.4 **Public Information.** Public information tools will be used to convey the project needs, goals, and constraints; scope of work; schedule; funding source(s); land use application and other permit status (if applicable); and construction schedule to include the following:
  - creation of a project-specific webpage that is updated throughout the project to inform and gather public comment
  - creation of an interested parties list to provide periodic updates through email and print
  - updates in the city newsletter
  - posting of project information signs at project site
  - social media updates
  - media releases at major project milestones
  - Neighborhood Association meetings as needed
  - updates to Boards and Commissions as needed

### **Task 1 Assumptions:**

- All public information tasks to be developed and managed by City Project Manager.
- Contract engineer to attend up to four Neighborhood Association meetings

### **TASK 2: Project Orientation/Data Collection**

**2.1 Data Collection.** Obtain and review the following information before finalizing the site survey requirements.

- Asbuilt records from City for project area
- GIS base map (shapefiles) for tax lots, utilities, environmental overlays, and recent aerial photo
- City's preliminary project development information

**2.2 Design Survey.** Survey, find/determine property line locations, obtain new utility locate information and verify key utility inverts. The survey work will include:

- **Survey research** for establishment of property line and easement boundaries within the project area.
- **Establish horizontal and vertical control**  
Establish survey control and tie existing monumentation necessary to establish the adjoining property lines. Horizontal control will be Oregon State Plane Coordinates, Oregon North Zone, NAD 83(91), expressed in International (SI) Feet. Vertical control shall be NGVD 29, expressed in U.S. Survey Feet based on City of Beaverton Control monuments or Washington County Geodetic survey numbers.
- **Topographic survey**  
Topographic survey will include all features pertinent to the design of the proposed new sidewalk(s) on Menlo Drive and associated street and drainage improvements, such as curbs, pavement, trees, notable landscaping, walls, fences, nearby structures, and utility locations (valves including depth to top of valve nut, center of manhole and conduit IE's and diameters/direction and center of manhole lids) as marked in response to a locate request with the Oregon Utility Notification Center.
- **Geotechnical Investigation.** Perform a geotechnical investigation to determine retaining wall design parameters. The geotechnical investigation will include a review of the suitability of the existing pond berm to be utilized as pond storage for the extended dry detention option.

### **TASK 3: Preliminary Engineering**

**3.1 Develop Preliminary Plans showing three different alternatives.** Each alternative will show the needed right-of-way and/or utility relocation needs to enable the construction of the alternative.

**3.2 Alternative Analysis and Preliminary Cost Estimates.** Prepare a report outlines the pros and cons of each alternative with associated preliminary cost

estimates for right-of-way, utility relocation (possible utility undergrounding expense), tree impacts, private driveway and other property impacts outside of the proposed right-of-way (The Temporary Construction easement areas), and construction.

**3.3 Preliminary Engineering Recommendation.** Prepare preliminary engineering recommendation and meet with City Project Manager to review.

#### **TASK 4: Final Engineering of the Selected Alternative**

**4.1 60% Submittal.** Prepare 60% construction plans based on the City's preferred facility option. Update preliminary cost estimate. Plans to include:

- Title sheet
- Existing conditions
- Demolition plan
- Site plan
- Grading plan
- Preliminary driveway adjustments plans and relocation of mailboxes and other private property improvements such as fences, walls, plants, etc.
- Storm drainage facilities (conveyance, surface water runoff treatment)
- Utility relocation plan
- Tree removal/preservation plan
- Base sheet in AutoCAD and PDF for lighting plan markup by City Staff

**4.2 90% Submittal.** Prepare 90% construction plans based on the City's comments to the 60% submittal. **Note:** This task will start upon completion of right-of-way acquisition. Cost estimates to be updated. Plans to include:

- Title sheet
- Existing conditions
- Demolition plan
- Site plan
- Grading plan (with appropriate reference for the top soil thickness)
- Erosion control plans
- Driveway adjustments plans and relocation of mailboxes and other private property improvements such as fences, walls, plants, etc.
- Retaining wall plan (if needed)
- Storm drainage facilities
- Utility relocation plan
- Pathway and lighting plan (Design markup by City on consultant prepared Base Sheet, drafting and plans sheet inclusion by Consultant)
- Lighting details
- Landscape plan
- Irrigation plan (if needed)

**4.3 100% Submittal.** Prepare 100% construction plans based on the City's comments to the 90% submittal. Final cost estimate. Plans to include:

- Title sheet
- Existing conditions
- Demolition plan
- Site plan

- Grading plan
- Erosion control plans
- Driveway adjustments plans and relocation of mailboxes and other private property improvements such as fences, walls, plants, etc.
- Retaining wall plan (if needed)
- Storm drainage facilities
- Utility relocation plan
- Tree removal/preservation plan
- Pathway and lighting plan
- Details (including subgrade plan if required)
- Lighting details
- Landscape plan
- Irrigation plan (if needed)

**Task 4 Assumptions:**

- *The City will provide lighting and electrical design and associated specifications to be ready with the 90% submittal*
- *City will prepare bid documents and Consultant will provide special specifications bid sheet and bid item descriptions that will be part of the bid documents*
- *Landscape plan will require a Landscape Architect and temporary irrigation will be the responsibility of the contractor*
- *Traffic control plan will be a contractor submittal*
- *Land Use, Site Development, and other resource agency permitting will be done by City Staff*

**TASK 5: Right of Way Acquisition Services**

Consultant to provide appraisal services, review appraisal coordination, and acquisition negotiations for parcels along Menlo Drive. Consultant to deliver appraisal report to City Project Manager for approval and determination of just compensation. Consultant to prepare offer letters and deliver to property ownership. Upon successful negotiation, Consultant to provide signed agreements to City Project Manager for approval and payment.

**5.1 Scope of Work:** Consultant to perform the following tasks:

- Obtain preliminary title reports
- Appraise all parcels
- Appraisal review of all reports
- Determine selling process per HOA CC&R's
- Prepare and sent general information notice of project
- Create offer package
- Acquisition file preparation, management and finalization to include, but not limited to contract diary, appraisal, appraisal review, offer letter, legal description, exhibit map, acquisition documentation, preliminary title report, supporting documentation
- Negotiate and acquire property
- Meet with HOA board and facilitate process to obtain required property owner approvals
- Coordinate closing and recording through title company

- Coordinate with the City Project Manager as-needed
- Coordinate with utilities regarding an existing easements
- Condemnation preparation and support as-needed

5.2 **Schedule:** Consultant to commence immediately upon receiving a task order from City Project Manager by scheduling a kick off meeting with city personnel to clarify lines of communication, schedule, city preferred procedures and processes, and well as templates for documents.

#### **Task 5 Assumptions**

- *Additional services beyond scope will be provided with mutual agreement of timing and cost*
- *HOA CC&R's clearly spell out process for selling property*
- *Title on property will be clean*
- *Negotiations will go no longer than 3 months*
- *Consultant will not contact or pay lenders*
- *Arrangements will be made for closing at a title company after the city has approved purchases. The closing company will record documents and the original will be sent to the city for their files*
- *Closing and recording will be handled through a private title company and paid directly by the City of Beaverton*

#### **TASK 6: Bidding Assistance/Construction Administration**

6.1 **Respond to Bidder inquires:** Respond to bidder inquires. Prepare addenda if required. Attend the pre-bid meeting.

6.2 **Review Bids with City Project Team:** Prepare comparison spreadsheet of all bid prices and assist City staff with bid recommendation.

6.3 **Provide Construction Administration and Assistance:** Provide construction support services on an on-call basis. Will Included at a minimum 1) Attending the preconstruction meeting, 2) Review and approval of all product submittals, 3) Responses to contractor RFIs (request for information), 4) Weekly construction progress meetings and construction site review suitable for making notes for the record [as-built] construction drawing preparation. City staff will perform construction inspection.

6.4 **Project Closeout:** Final walk through with City Project Manager. Provide project files as required by City.

#### **TASK 7: Construction Staking**

Provide one set of construction stakes for clearing and grading, sidewalk, retaining walls, pavement adjustments, lighting and storm drainage.

#### **TASK 8: Record Drawings**

Prepare and record drawings showing the constructed facilities based on construction observation and contractor and inspector provided notes.

**Task 8 Assumptions:**

*Record Construction Drawings will be submitted as 4 mil mylar with image being scratch and water resistant and electronic copies (AutoCAD files as well as PDF)*

**TASK 9: Extra Work as Authorized**

Additional work as directed by the Engineer. No work under this bid item shall be paid unless authorized in writing by the Engineer.

**1.3 Project Funding**

The project is funded by Street Fund (101) and General Fund (001).

**1.4 Estimated Project Cost**

This information is provided for guidance only. Do not submit cost or billing rate information with this proposal. Proposals shall be rejected if they contain this information. Only the proposer selected to negotiate a scope of work shall be required to submit billing rates and cost information.

The estimated budget for consulting services related to this RFP is \$200,000.

**1.5 Schedule of Work**

The City expects the proposer selected for award of contract to start work as soon as a contract is signed. Please refer to Attachment A for the City's standard form of contract. The City anticipates all design work will be completed on or before September 1, 2017; all right-of-way work will be completed on or before December 1, 2017; and all construction completed on or before November 30, 2018.

**1.6 Pre-Qualification of Proposers**

Pre-qualification of proposers is not required for this procurement.

**SECTION 2: PROPOSAL PROCESS****2.1 Procurement Method**

The City is conducting this RFP using a Qualified Based Selection (QBS) pursuant to ORS 279A.050 and Beaverton Purchasing Code section 48-0220. The City seeks qualified based proposals that will enable the City to determine which consultant(s) and solution will best meet the City's needs.

## 2.2 Schedule of RFP Events

The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes will be made to all interested parties.

<b>Event</b>	<b>Completion Date &amp; Time</b>
Advertisement and release of proposals	July 6, 2016
Deadline for questions prior to Pre-proposal conference	5:00 PM on July 14, 2016
Mandatory Pre-proposal conference	10:00 AM on July 18, 2016
Deadline for submission of all other questions	5:00 PM on July 22, 2016
Deadline for RFP protests or requests for changes	5:00 PM on July 25, 2016
Deadlines for submission of proposals	2:00 PM on August 1, 2016
Notification of proposers selected to interview	Week of August 15
Interviews	Week of August 15
Selection committee recommendation	August 22, 2016
Contract negotiation with top proposer	August 29 – September 5, 2016
Contract negotiation with next to top proposer (if necessary)	August 29 – September 5, 2016
Award of contract by contract review board	September 12, 2016
Commencement of services	September 26, 2016

## 2.3 Mandatory Pre-Proposal Conference

A pre-proposal conference will be held at Beaverton City Hall, 12725 SW Millikan Way Beaverton, OR 97005, on **JULY 18, 2016** at **10:00 AM** in the Council Chambers. Attendance is **MANDATORY** for firms planning to submit a proposal. The objective of the pre-proposal conference is to provide an informal meeting to discuss the contents of the RFP in detail and clarify any questions potential proposers may have. In addition, this conference will give proposers an opportunity to meet with key staff of the City.

To assist in the productivity of this meeting, please email questions prior to the conference to [tmuralt@BeavertonOregon.gov](mailto:tmuralt@BeavertonOregon.gov), by 5:00 pm on July 14, 2016 with subject title: Menlo Drive Sidewalk. Additional questions that consultants have during the procurement process will be accepted up to 5:00 PM on July 22, 2016 and will be posted on the city website as Frequently Asked Questions. Statements made by the City are not binding upon the City unless confirmed by written addendum.

See Section 3 of this RFP (Questions, Clarification, Modifications and Protests), below, for further information regarding how Proposers may ask questions, seek clarifications and request changes to this RFP.

## 2.4 Proposal Deadline and Submittal Information

Sealed proposals will be received until **2:00 PM on August 1, 2016**. Late, faxed or electronically transmitted proposals shall not be accepted.

Submissions in response to the RFP shall contain one signed original paper copy and one signed digital copy (CD). Submit the proposal and copies in one sealed envelope. The name and address of the Proposer must appear on the outside of the envelope. Additionally, in the lower left-hand corner of the outside envelope print or type the following:

**MENLO DRIVE SIDEWALK IMPROVEMENT PROJECT**

**Close: AUGUST 1, 2016 @ 2:00 PM**

Proposals delivered by the U.S. Postal Service shall be addressed and mailed to:

Terry Muralt  
Purchasing Agent  
PO Box 4755  
Beaverton, OR 97076

Proposals delivered by a delivery service other than the U.S. Postal Service shall be addressed and delivered to:

Terry Muralt  
Purchasing Agent  
12725 SW Millikan Way  
Beaverton, OR 97005

Under exigent circumstances, proposals may be addressed to Terry Muralt, Purchasing Agent, and hand delivered to any clerk at the Beaverton Finance Department's utility billing counter located on the fourth floor of City Hall, 12725 SW Millikan Way, Beaverton, Oregon. Hand delivery to any other location in City Hall will delay the official receipt of the proposal by the City's Purchasing Agent. Proposals received after the designated time and date will be returned unopened. **The City does not accept proposals delivered by e-mail or facsimile transmission.**

## **2.5 Protests**

Address any protests to:

City of Beaverton  
Terry Muralt, CPPB, Purchasing Agent  
12725 SW Millikan Way  
Beaverton, OR 97005

**State the name of solicitation and the word "PROTEST"**

## **2.6 Specification/Term Protest**

Ambiguities or problems with this RFP, its contract terms or specifications may be resolved by asking questions, seeking clarification, requesting changes or by filing a formal protest. Information provided below describes the appropriate process to pursue these options, should the need arise.

### **2.6.1 RFP Protest or Request for Change of Specifications or Terms**

A Proposer who believes any proposal specifications or terms detailed in this RFP (including its Addenda, if any) are unnecessarily restrictive or limit competition may submit a protest or request for change, in writing, to the Purchasing Office. A request for change regarding the terms of this RFP may be submitted via facsimile. Any protest or request for change regarding the terms of this RFP shall include the reasons for the protest or request and shall detail any proposed

changes to the specifications or terms. The Purchasing Office shall respond to any protest or request for change and, where appropriate, shall issue any revisions, substitutions, or clarification via addenda to all interested Proposers. To be considered, protests or requests for change regarding the terms of this RFP must be received by July 25, 2016 **properly marked whether it is a protest or request for change of specifications or terms.** If a timely protest or request for change regarding the terms of this RFP is received, the proposal opening date may be extended if necessary to allow consideration of the protest or request for change and issuance of any necessary addenda to the proposal documents.

### **2.6.2 Exclusion Protest**

Upon City's issuance of the notice of (a) Proposers to be interviewed or (b) Proposers invited to engage in discussion, a Proposer may protest its exclusion from the top tier as set forth in Beaverton Purchasing Code section 47-0720. An Affected Proposer may protest, for any of the bases set forth in Beaverton Purchasing Code section 47-0720(B). Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.

### **2.6.3 Selection Protest**

City intends to announce its selection of a preferred proposer by posting the tabulation sheet of Proposal evaluations and selection notice/intent to award letter on the City's Web site and/or by letter or email to all Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may also submit a written protest of the selection to the City no later than seven (7) calendar days after the date of the selection notice. Protests submitted after that date shall not be accepted. The selection protest shall be directed to Terry Muralt, Beaverton Purchasing Agent, [tmuralt@BeavertonOregon.gov](mailto:tmuralt@BeavertonOregon.gov), 12725 SW Millikan Way Beaverton, Oregon 97005. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.

### **2.6.4 Response to Intent to Award Protest**

City intends to promptly respond in writing to properly-filed selection protests submitted by adversely affected or aggrieved Proposers. The City's response does not constitute an admission or confirmation that the Proposer is in fact adversely affected or aggrieved and/or entitled to protest the City's selection of the highest ranked Proposer.

### **2.6.5 Other Protests**

An Affected Proposer may protest, for any of the bases set forth in Beaverton Purchasing Code section 47-0720(B), its exclusion from the selection of interviewees or any phase of this procurement, or an Addendum issued following initial Closing, if the City has not otherwise provided Proposers the opportunity to

protest such exclusion or Addendum. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City.

## **2.7 Single Point of Contact**

All questions or requests regarding the procurement process shall be directed to Terry Muralt, Beaverton Purchasing Agent, at (503) 526-2229 or [tmuralt@BeavertonOregon.gov](mailto:tmuralt@BeavertonOregon.gov). The RFP document may be reviewed upon request at the Beaverton City Hall, 12725 SW Millikan Way Beaverton, Oregon 97005.

## **2.8 Project Manager**

The Project Manager will be Luke Pelz, who can be reached by telephone at 503-526-2466 or by e-mail at [lpelz@beavertonoregon.gov](mailto:lpelz@beavertonoregon.gov).

# **SECTION 3: PROPOSAL FORMAT & CONTENT**

Proposals must address all submission requirements set forth in this RFP, and must describe how the services will be provided. Page limits are noted, when relevant, and assume 8 1/2 x 11 – inch paper and single-spaced lines. Unless otherwise specified, no particular form is required. In order to be considered for selection and possible contract, the proposal must be complete and include the following items below in subsections 3.1 through 3.8. Proposals that merely offer to provide services as stated in this RFP will be considered non-responsive.

## **3.1 Proposal Format and Administrative Requirements**

The City's proposal format and administrative requirements are set out below. These are intended to facilitate the City's ability to quickly and accurately evaluate proposals. Failure to follow these format and administrative requirements may affect the scoring of proposals.

### **3.1.1 Cover Page**

Include a cover page with the submitted proposal. The cover page is counted in the total page count. Include the following information on the cover page:

- The RFP Title;
- The name, title, address, telephone number, fax number, e-mail address of Proposer's primary contact person; and
- The date of submission.

In addition to the above information, but not in lieu thereof, Proposers may include other information on the cover page.

### **3.1.2 Table of Contents**

Include a table of contents with the submitted proposal. All material items comprising the proposal should be clearly identified and easily located. The table of contents page is counted in the total page count.

### **3.1.3 Transmittal Letter**

Include a transmittal letter with the proposal, not exceeding two pages in length. The letter should identify by name and contact information the one person proposer wishes the city to contact after proposals have been evaluated, scored and ranked. The letter may include any other information or insights the proposer deems relevant, but in no instance may the letter exceed two pages in length. The transmittal letter is counted in the total page count.

### **3.1.4 Signature Page**

The Proposer must sign and submit the Signature Page (see Section 6 of this RFP). The submission and signing of the signature page indicates the intention of the Proposer to adhere to the provisions described in this RFP. The Signature Page does not count in the total page limit that may be required in this solicitation.

### **3.1.5 Page Limit**

There is a 20 page limit on proposals submitted in response to this procurement.

### **3.1.6 Commitment to Sustainability**

In an effort to promote greater use of recycled and environmentally preferable products and to minimize waste, the City encourages all proposals submitted in hard copy be prepared simply and economically. The use of special bindings, unnecessary colored displays and irrelevant promotional materials is neither required nor desired. Double-sided printing on recycled paper and/or the use of reusable products is preferred.

### **3.1.7 Trade Secrets and Confidential Information**

If it is necessary to submit trade secrets or other confidential information in order to comply with the terms and conditions of this RFP, Proposers shall label any information that it wishes to protect from disclosure to third parties. Proposers must label each page containing a trade secret or other confidential information and identify on each page the content that is a trade secret or is other confidential information. Any Proposer who designates its entire proposal as confidential or a trade secret may be disqualified.

The City shall take reasonable measures to hold in confidence all such labeled information, but shall not be liable for release of any information when required by law or court order, whether pursuant to the Oregon Public Records Law or otherwise. The City shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3). Furthermore, by submission of a proposal, the Proposer agrees to indemnify and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Proposer has designated as a trade secret and/or as confidential information.

## **3.2 Project Understanding**

The proposer shall include a detailed statement to demonstrate its understanding of the project, including but not limited to:

- The City's goals in pursuing the project.
- The role of the proposer.

- Key project milestones, which are most important, and the ramifications of missing milestones.
- The key deliverables required by the project.
- Cost implications for design and construction elements.

### **3.3 Minimum Qualifications**

If the scope of work requires engineering services or surveying services to be provided, you must comply with the below minimum requirements and list the name and registration number of the qualifying professionals as described below. Proposals that do not meet the below minimum qualifications, as required, will not be evaluated.

#### ➤ REGISTERED PROFESSIONAL ENGINEER

Consultant may not provide engineering services unless the work is done under the full authority and responsible charge of an Oregon Registered Professional Engineer (PE) as defined in ORS 672.002(2). The PE must be currently registered in active status with the Oregon State Board of Examiners for Engineering and Land Surveying, and must supervise and direct the work proposed under the contract. As required by Oregon law, Consultants shall place their official Oregon Registered PE certified seal and signature on all reports, maps, design drawings, and specifications delivered to City.

**List the name and registration number of at least one Oregon Registered Civil Engineer intending to perform engineering services under the contract.**

#### ➤ REGISTERED PROFESSIONAL LAND SURVEYOR

Consultant may not provide surveying services unless the work is under the full authority and responsible charge of an Oregon Registered Professional Land Surveyor (PLS) as defined in ORS 672.002(6) (b). The PLS must be currently registered with the Oregon State Board of Examiners for Engineering and Land Surveying, and must supervise and direct the services proposed under the contract. As required by Oregon law, Consultants shall place their official Oregon Registered PLS certified seal and signature on all reports, maps, design drawings, and specifications delivered to City under contract.

**List the name and registration number of at least one PLS intending to perform surveying services under the contract.**

### **3.4 General Qualifications**

Proposals shall demonstrate the qualifications and experience of the personnel who will work directly with the City rather than describing the general experience and qualifications of the firm. The City will not consider promotional literature of a general nature. The focus should be on recent (approximately 5 years) and local project experience that is relevant to the scope of work outlined in this RFP. Include the following information:

#### **3.4.1 General Qualifications of the Proposer**

- Describe the Proposer's capabilities and experience.
- List Proposer experience working with similar projects.
- Resources available to perform work and proportion of staff time spent on project
- Record of past performance, including information on price and cost data from previous projects, quality of work, ability to meet schedules, and cost control
- Availability to and familiarity with project location
- Describe how the Proposer is legally qualified in the State of Oregon to perform the work requested.

#### **3.4.2 Project Manager Qualifications**

- The project manager is the person who will be assigned by the proposer to provide day-to-day management of this project.
- List the qualifications of the project manager who will work on this project. Include a description of the relevant education and training, certificates and licenses, professional background, and years of experience with work relevant to the scope of this RFP.
- Describe the experience of the project manager, particularly similar projects with government entities. Identify the project manager's specific role in relevant projects; do not include projects where the project manager had a minor or no active role. The City will only consider projects that include a client contact name and phone number.
- Provide three (3) client references who have worked with the project manager.
- If submitting a resume, only include project experience relevant to the scope of work outlined in this RFP.

#### **3.4.3 Key Personnel Qualifications**

- Provide information about the qualifications and experience of key personnel with expertise in roadway design and storm water (See Project Manager Qualifications)
- Describe the experience of the project manager working with the key personnel.

#### **3.4.4 Subcontractor Qualification**

If a subcontractor will be used in this project:

- Provide name and information about the qualifications and experience of any subcontractor(s). (See Project Manager Qualifications)
- Describe the experience of the project manager and key personnel working with the subcontractor(s).

### **3.5 Project Approach and Schedule.**

The proposer shall include a detailed statement of its approach to the project and schedule. Include the following information.

- A detailed explanation of proposer's approach to the work, the techniques the proposer expects to use, and the use of key personnel. This should include an explanation of any modifications to the scope of work presented in this RFP.
- Describe how proposer would use City personnel, if at all, to assist during the project and indicate the approximate time requirement.
- Describe the projected workload of the project manager, key personnel and subcontractors and demonstrate their availability to timely provide the services requested in this RFP.
- Describe your approach to the overall management and integration of all activities required by the scope of work, including quality assurance, responsibility, and cost control.
- Describe how the project will achieve the lowest cost for design and suggestions for how to reduce the cost of design.
- Describe which design tasks will require most design hours, how many plan sheets will be required, and a breakdown of plan sheets by category of work.
- Describe a minimum of five ways that the project could reduce the cost of construction.
- Provide three design options, rank by cost and benefit, and a recommendation.
- Provide any additional information about proposer's project approach that would be beneficial to the selection committee.

**Note:** Do not include any information about price, pricing policies or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates, and overhead.

### **3.6 Minority, Women, Emerging Small Business (M/W/ESB) Program**

The City values and supports diversity and is dedicated to advancing equity in public contracting by increasing opportunities for State of Oregon certified M/W/ESB enterprises.

Please address the following:

- i) Is your firm currently certified in the State of Oregon as an M/W/ESB enterprise? If yes, indicate all certification types and your firm's certification number(s). (4 points)
- ii) Provide a narrative description of your firm's experience, including any innovative or successful measures, promoting M/W/ESB enterprises as partners, subcontractors, or suppliers on previous projects. (1 point)
- iii) Provide a list and percentage of total contract dollars spent with M/W/ESB enterprises with which the proposer's firm has had a contractual relationship during the last 12 months. (2 points)
- iv) Describe the actions the proposer will take to include M/W/ESB enterprise participation on this project. Of the subcontractors identified in Section 3.4.4, specify which subcontractors are M/W/ESB enterprises and what certification they hold, if any. (3 points)
- v) State the participation goal the proposer believes it can realistically achieve on this project for each M/W/ESB enterprise identified above. A percentage level is preferred. (2 points)

### **3.7 Additional Information**

Provide any other information that the proposer feels applicable to the evaluation of the proposal or of their qualification for accomplishing the project. Use this section to address those aspects of your services that distinguish your firm from other firms. Additional information shall be considered when evaluating the proposer's Project Approach and Schedule.

Proposers are encouraged to improve upon the tasks, work items, or other elements described in this RFP. However, prior to basing a proposal on those improvements, proposers should check with the City's project manager to ensure that the City views the changes as desirable improvements.

If there is no additional information to present, state, "There is no additional information we wish to present."

## **SECTION 4: EVALUATION OF PROPOSALS & CONTRACT AWARD**

### **4.1 Clarification of Proposals**

At any point during the evaluation process, the City reserves the right to seek clarification of each proposal submitted. However, a request for clarification does not permit changes to a proposal.

### **4.2 Evaluation Criteria**

The City will make a selection based on the evaluation of the written proposals and any interviews it conducts. The City may elect to interview all proposers or only the highest ranked proposers. The City reserves the right to make a selection based only on the evaluation of the written proposals and not conduct any interviews. Written proposals and interviews will be evaluated based on the following criteria:

1. Project Understanding – **20%**
2. Qualifications – **40%**
3. Project Approach and Schedule – **40%**
4. Minority-Owned, Women-Owned, Emerging Small Business (M/W/ESB) (**10%**)

Information gained during an interview may be used to re-evaluate proposals according to the above criteria.

### **4.3 Method of Selection**

A selection committee will evaluate each submitted written proposal and each interview, when applicable, to determine the responsible proposer whose proposal is the most advantageous to the City based on the evaluation process and evaluation criteria outlined in this RFP. The City will award the contract to the highest ranked responsive proposer.

### **4.4 Responsiveness and Responsible Determination**

As a condition to be awarded a contract, a proposal must be responsive and a Proposer must meet the responsible proposer requirements identified in ORS 279B.110 and Beaverton Purchasing Code section 47-0640.

#### **4.4.1 Responsiveness**

To be considered responsive, the Proposal shall substantially comply with all requirements of the RFP and all prescribed public solicitation procedures. In making such evaluation, City may waive minor informalities and irregularities.

#### **4.4.2 Responsibility**

Prior to award of a contract, City intends to evaluate whether the apparent successful Proposer meets the applicable standards of responsibility identified in Beaverton Purchasing Code section 47-0500. In addition, prior to award of a contract, the apparent successful Proposer must be duly licensed and registered as may be required by federal, state and local governments to provide the services described under the "Scope of Work" heading. Submission of a signed Proposal constitutes approval for City to obtain any information City deems necessary to conduct the responsibility evaluation. City shall notify the apparent successful Proposer in writing of any other documentation required. In conducting its responsibility evaluation, City may request information in addition to that already required in the RFP to the extent the City, in its sole discretion, considers it necessary or advisable. City may postpone the award of the contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. The City may provide the apparent successful Proposer a reasonable opportunity to correct any licensing or registration deficiencies, so long as the opportunity does not unduly burden the City. Failure of the apparent successful Proposer to demonstrate Responsibility, as required under Beaverton Purchasing Code section 47-0500, shall render the Proposer non-responsible and constitute grounds for offer rejection, as required under ORS 297B.100.

#### **4.5 Optional Interviews**

The City reserves the right to conduct interview with any or all Proposers. This will provide an opportunity to clarify or elaborate on the proposal. The Project Manager will schedule the time and location of these presentations (if necessary) and notify the selected firms. *All Proposers shall be located in the Portland metro area.* Should any or all firms be selected for oral interviews, the invited firms will be evaluated based on the same factor, weighting and ranking system outlined above. The firm with the highest point total resulting from evaluation of the submitted proposal and interview acquired during any interview will be considered the best Proposer. The points from the first evaluation will not be added to or otherwise made a factor in scoring of the second evaluation. Proposers excluded from interviews may protest the exclusion (see Section 2.6.2 Exclusion Protest).

#### **4.6 Investigation of References**

The City may investigate the qualifications of a Proposer, including but not limited to: successful performance of similar services; compliance with specifications and contractual obligations; its completion or delivery of services on schedule; and its lawful payment of suppliers, subcontractors, and workers. The City may request references in addition to those provided by the Proposer, may investigate any references whether or not furnished by the Proposer, and may investigate the past performance of any Proposer.

The City intends to contact references of the Proposers invited for interview. Reference checks may be done by any reasonable method, including in-person interview, telephone interview or written questionnaire. The City will conduct the reference checks and the evaluation of gathered information uniformly across all Proposers.

#### **4.7 Highest Ranked Proposer Protest**

City intends to announce its notice of highest ranked proposer prior to Contract award by posting the tabulation sheet of Proposal results and Notice of Highest Ranked Proposer Letter on the City's Web site and/or by letter or email to Proposers. The notice shall serve as notice to all Proposers that the City intends to negotiate and to make an award. Adversely affected or aggrieved Proposers shall have seven (7) calendar days from the date of the Highest Ranked Proposer Notice within which to file a written protest. Protests submitted after that date shall not be accepted. Protests shall specify the grounds upon which the protest is based. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City. City intends to respond in writing to properly-filed intent-to-award protests submitted by adversely affected or aggrieved Proposers. Any response provided by City, however, is not intended to, and may not in and of itself constitute, confirmation that the Proposer is in fact adversely affected or aggrieved and therefore entitled to protest notice of highest ranked proposer. After expiration of the seven (7) calendar-day intent-to-award protest period and resolution of all protests, City intends to proceed with negotiations and, where appropriate, the final award. The protest shall be directed to Terry Muralt, Beaverton Purchasing Agent, [tmuralt@BeavertonOregon.gov](mailto:tmuralt@BeavertonOregon.gov), 4755 SW Griffith Dr., Beaverton, Oregon 97005.

#### **4.8 Single or Multiple Contracts**

It is the City's intention to award a single contract. However, the City may award to more than one Proposer if the City believes it is in the public interest to do so. The scope of work to be awarded under multiple contracts will be subject of negotiation.

#### **4.9 Notice of Intent to Award**

Upon completion of the evaluation process, the selection committee will advise the proposers of its number one selection using the Notice of Intent to Award form. The notice shall serve as notice to all Proposers that the City intends to negotiate and to make an award. The Notice of Intent to Award Letter shall be posted on the City's Web site.

#### **4.10 Topics open to discussion and/or negotiation**

The City may engage in discussions and serial negotiation with the highest ranked Proposer(s) on the following topics and Proposer(s) may propose alternative contract terms and conditions that relate to the following topics:

- Scope of Work
- Cost
- Method of Payment
- Term of Contract
- Required Insurance

If the City does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the City will begin negotiating a contract with the highest ranked

Proposer. Contract Negotiations will commence within a reasonable time after notification of intent to award, such timing determined by the City in exercise of its sound discretion. The City shall direct negotiations toward obtaining written agreement on:

- o The Consultant's performance obligations and performance schedule;
- o Payment methodology and a maximum amount payable to the Consultant for services required under the contract that is fair and reasonable to the City as determined solely by the City; and
- o Any other provisions the City believes to be in the best interests to negotiate.

The City may engage in serial negotiations with the highest ranked proposer of contract terms pursuant to Beaverton Purchasing Code section 48-0220 (D)(3). In the event that mutually agreeable terms cannot be reached within a reasonable time as judged by City, City may formally terminate negotiations with the Proposer. The City may then attempt to reach a final agreement with the next highest ranked Proposer and may continue on in the same manner with remaining Proposers until an agreement is reached. The City reserves the right to re-open negotiations with a Proposer with whom the City has previously formally terminated negotiations if the City believes it is in the public interest to do so pursuant to BPC section 48-0220 (D) (4).

#### **4.11 Cost Information (Applies only to selected Proposer)**

**DO NOT SUBMIT BILLING RATES OR ANY COST INFORMATION WITH PROPOSALS. ONLY THE PROPOSER SELECTED TO NEGOTIATE A SCOPE OF WORK SHALL BE REQUIRED TO SUBMIT BILLING RATES AND COST INFORMATION.**

##### **4.11.1 Billing Rates**

Following the notice of Highest Ranked Proposer, the selected Proposer will meet with the Project Manager to finalize the scope of work. Then the highest ranked Proposer shall submit (electronically in Excel format), the billing rate information within 5 business days of request by City.

Billing rate information must include either "Direct Salary or Overhead Information" or "Negotiated Billing Rate Schedule" described below, as applicable to your Proposer's (and subconsultant's) accounting method:

##### **(1) Direct Salary and Overhead Information:**

- a. Direct Salary Rate Schedule.** This schedule includes the name, classification and actual direct salary rate for each employee that may be used under the contract. The direct salary rate schedule will not be included in the contract but will be used by City for negotiations and to develop an approved billing rate schedule, if applicable, for the contract.
- b. Calculation of Overhead Rate** (if applicable for your type of accounting). Current overhead accounting information on a form using the standard 3-column format. Proposers shall condense or expand categories as applicable to the Proposer's method of accounting.

Proposers that have not established an overhead rate, based upon their particular financial reporting methodology, shall be reviewed by City to determine whether an overhead rate schedule will be required or a negotiated non-provisional billing rate will be used. If a Proposer does calculate overhead, the information must be submitted to City and updates must be provided annually.

(2) **Negotiated Billing Rate Schedule (NBR):** This schedule is used by Proposers that do not calculate overhead as part of their normal accounting practice and City determines it is in the best interest of the City to negotiate fully loaded billing rates. The negotiated billing rate schedule includes rates that are fully loaded with direct salary, indirect expenses and profit. Provide name, classification (project role) and fully loaded rate for each employee. Use of a negotiated billing rate schedule may be required by City for contractors or subcontractors that do not have audited overhead rates or that, upon cursory review, appear not to be calculating overhead correctly.

#### 4.11.2 Cost Estimate Breakdown

All costs are to be contained in this section. For each project element, include a cost and state a grand total for all project elements. This section shall also include payment terms requested for services rendered.

The cost schedule shall include:

- a. Proposer's fee for which the requested work will be done, broken down as follows:

☐ The fee by phase and task, and total hours. Include an estimate of the level of effort in the following format:

Tasks	Staff 1	Staff 2	Staff 3	Total Hours
Task 1	1			1
Task 2		1		1
Task 3			1	1
Task 4	1	1	1	3
Project Total	2	2	2	6

- Total hours by staff classification multiplied by the actual hourly billing rate (and overhead rate, if applicable).
- Cost and personnel should be clearly tied to the project specific tasks.
- Estimated level of effort and hours does not limit the actual level of effort by the selected proposer to complete all work under a lump sum or guaranteed maximum price contract.

- b. All out of pocket costs, including travel and any other direct non-labor expenses.

- c. Contingency tasks.
- d. A fee for each phase of the project.
- e. Proposed profit percentage for the project.
- f. The method used to charge for any special requests, reports, or broadening of the services within the scope of work described in this RFP.

#### **4.11.3 COMPENSATION FORMAT**

The final compensation format will be negotiated after contract award.

#### **4.12 Award consideration**

Whether to award a contract shall be determined by City in its sole and absolute discretion to be in its best interest. City reserves the right to withdraw any and/or all items from award consideration.

#### **4.13 Contract Award and Related Procedures**

The City may award one contract as a result of this procurement. City generally issues a notice of intent to award in advance of the actual award of a contract procured through a request for proposal. The period between the publication of the intent to award and the award of the contract varies, but typically is about 14 days.

#### **4.14 Final Selection**

The City will attempt to reach a final agreement, including a detailed scope of work, project schedule, and fee schedule, with the highest ranked Proposer. The City may then attempt to reach a final agreement with the second highest ranked Proposer and may continue on, in the same manner, with remaining Proposers until an agreement is reached. The consultant selection process will be carried out under Beaverton Purchasing Code 48-0220 (D) (3) & (4). The proposal and all responses provided by the successful Proposer may become a part of the final contract.

When an agreement is reached, a contract for the work will be prepared and executed upon Council Approval.

#### **4.15 Award Recommendation**

Recommendation of the final agreement will be presented as an agenda item published in the City's Council Agenda. Agendas for Council meetings are posted on the City website at: [www.BeavertonOregon.gov](http://www.BeavertonOregon.gov). The decision by the Contract Review Board to award the contract shall constitute the final decision of the City to award the Contract.

#### **4.16 Form of Contract**

A copy of the standard Professional Service contract which the City expects the successful firm or individual to execute is included as Attachment "A". The contract will incorporate the terms and conditions from this RFP document, the submitted proposal and negotiated terms.

#### **4.17 Term of Contract & Availability of Funds**

A contract awarded is expected to commence on or about September 12, 2016 and end on or before November 30, 2018. Any contract awarded pursuant to the RFP that has a term of more than one year must include a non-appropriation clause. Continuation

or extension of the contract after the end of the fiscal period in which the contract takes effect shall be contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue the contract, City may terminate the contract without further liability by giving Proposer reasonable notice.

## **SECTION 5: GENERAL INFORMATION**

### **5.1 Proposals not available for Public Inspection at the Opening.**

No formal opening will occur in connection with this procurement. In accordance with ORS 279B.060 (6) (a) only the names of the proposers shall be disclosed at the opening. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

#### **5.1.1 Distribution of proposals**

The City intends to publish the names of all Proposers on its Website within 24 hours of the opening of Proposals. Proposals will be distributed to members of the City's evaluation team. In submitting a proposal, each Proposer agrees that the City may post the proposal on the City's intranet for evaluation and ranking and reveal any trade secret or other confidential materials contained in the proposal to City staff and to any outside consultant or third party retained by the City for purposes of evaluating and ranking proposals.

#### **5.1.2 Proposal validity period**

Each proposal shall be irrevocable for a period of ninety (90) days from the date of the scheduled proposal opening.

#### **5.1.3 Withdrawal of proposals**

If a Proposer wishes to withdraw a submitted proposal, it shall do so prior to the Closing date and time. The Proposer shall submit a written request to withdraw, signed by the Proposer, on the Proposer's letterhead, to the Purchasing Agent at the address listed on the front page of the RFP, as required by Beaverton Purchasing Code section 47-0440(B).

#### **5.1.4 Cost of preparing proposals**

All costs incurred in preparing and submitting a proposal in response to the RFP is the responsibility of the Proposer and shall not be reimbursed by Agency.

### **5.2 Interpretations and Addenda**

All questions regarding this project proposal shall be directed to Terry Muralt, Purchasing Agent, at either 503-526-2229 or [tmuralt@BeavertonOregon.gov](mailto:tmuralt@BeavertonOregon.gov). If necessary, interpretations or clarifications in response to such questions will be made by issuance of an addendum to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City will extend the closing date.

Proposers are responsible for checking for addenda on the City's Website. Proposers should visit the City's website in order to register to receive e-mail notification of any

addenda issued for this specific proposal document. Upon receipt of the e-mail notification, proposers are responsible to download the document from the "Current Bid & Proposal Opportunities" site at [www.beavertonoregon.gov/bids](http://www.beavertonoregon.gov/bids).

Any addendum issued as a result of any change in the RFP must be acknowledged on the "Signature Page" with proposal.

**Only questions answered by formal written addenda are binding. Oral and other interpretations or clarifications are without legal effect.**

### **5.3 Business License/Taxpayer Id Number**

A Proposer awarded a contract shall obtain a City business license as required by Beaverton Code section 7.01 prior to beginning work under this contract and must pay all fees due under the Business License Law during the term of the contract.

A Proposer awarded a contract shall complete an IRS Form W-9 for the City and provide the City with either the Proposer's Social Security Number or federal taxpayer ID number. This number is requested pursuant to BPC 47-0770 of the Beaverton Purchasing Code. Social Security numbers provided pursuant to this requirement will be used for the administration of state, federal and local tax laws.

### **5.4 Intergovernmental Permissive Cooperative Procurements**

Pursuant to ORS 279A.215 and City of Beaverton procurement rules, other public agencies may purchase goods and services under the terms, conditions and prices of any contract resulting from this solicitation if the Consultant agrees to extend the terms, conditions and prices of the contract resulting from this solicitation to such agencies.

Any such purchases shall be between the Consultant and the participating public agency and shall not impact the Contactor's obligation to City of Beaverton. Any estimated purchase volumes listed herein do not include estimated purchase volumes of other public agencies. City of Beaverton makes no representation or guarantee as to the volume of such additional purchases by other public agencies.

Any proposer, by written notification included with their solicitation response, may decline to extend the terms, conditions and prices of a resultant contract to any and/or all other public agencies.

### **5.5 Nondiscrimination**

The consultant agrees that, in performing the work called for by this proposal, consultant shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279C.500 through 279C.565.

### **5.6 Public Records**

If it is necessary to submit trade secrets or other confidential information in order to comply with the terms and conditions of this RFP, Proposers shall label any information that it wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: **"This material constitutes a trade secret under ORS**

**192.501(2) and is not to be disclosed except as required by law."** Each page containing the trade secret or other confidential information must be so marked.

The City shall take reasonable measures to hold in confidence all such labeled information, but shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

In submitting a proposal, each proposer agrees that the city may; (a) reveal any trade secret or other confidential materials contained in the proposal to city staff and to any outside consultant or third party who is hired by the city and (b) post the proposal on the city's intranet for purposes related to its evaluation and ranking. Furthermore, each proposer agrees to indemnify and hold harmless the city and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the proposer has designated as a trade secret and/or as confidential information. Any proposer that designates its entire proposal as a trade secret may be disqualified

## **5.8 Reservation of Rights**

City reserves all rights regarding the RFP, including, without limitation, the right to:

- Amend, delay or cancel the RFP without liability if City finds it is in the best interest of the City to do so (see generally ORS 279B.100);
- Obtain clarification of any point in proposal or obtain additional information necessary to properly evaluate a particular proposal;
- Reject any or all proposals received upon finding that it is in the best interest of the City to do so (see generally ORS 279B.100);
- Waive any minor informality or non-conformance with the provisions or procedures of the RFP, and seek clarification of any proposal, if required;
- Reject any proposal that fails substantially to comply with all prescribed RFP procedures and requirements;
- Negotiate a Statement of Work based on the Scope of Work described herein and to negotiate separately in any manner necessary to serve the best interest of the public;
- Amend any Contracts that are a result of the RFP; and
- Engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements under it to perform the same or similar services.

## **SECTION 6: SIGNATURE PAGE**

This page must be signed with the full name and address of the Proposer submitting the response; if a partnership, by a member of the firm with the name and address of each member; if a corporation, by an authorized officer thereof in the corporate name.

The undersigned verifies that he/she is a duly authorized officer of the company, and that his/her signature attests that information provided in response to this Request for Proposal Solicitation #3110-16B is accurate.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications have been received and duly considered and that all cost adjustments associated with the addenda are reflected in this proposal.

Addendum No(s).\_\_\_\_\_ Acknowledged? ☐ YES / ☐ NO

Resident Proposer as defined in ORS 279A.120 (1)?\* ☐ YES / ☐ NO

Proposers certify non-discrimination in accordance with ORS 279A.110 (4). ☐ YES / ☐ NO

If awarded a contract pursuant to this solicitation, will Proposer Participate in Intergovernmental Permissive Cooperative Purchasing (extend the terms, conditions and prices of such contract to other public agencies)?

If no, please explain on a separate piece of paper. ☐ YES / ☐ NO

Proposer hereby makes this proposal to furnish goods and services at the price(s) indicated herein in fulfillment of the requirements and specifications of the City as stated in the Request for Proposal.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Telephone Number (with area code)

\_\_\_\_\_  
Title

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Firm

\_\_\_\_\_  
City of Beaverton Business License No.

\_\_\_\_\_  
Address

\*"Resident Proposer" means a proposer that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the proposal whether the proposer is a resident proposer.

## **SECTION 7 - ATTESTATION of COMPLIANCE with TAX LAWS**

[COMPLETE AND SUBMIT THIS PAGE WITH YOUR BID OR PROPOSAL]

I, \_\_\_\_\_, representing \_\_\_\_\_  
Insert printed name Insert name of firm

(Bidder/Proposer), hereby attest that:

1. I am an authorized agent of Bidder/Proposer, and I have full authority from Bidder/Proposer to submit this attestation and accept the responsibilities stated herein.
2. I have knowledge regarding payment of taxes of Bidder/Proposer, and to the best of my knowledge, Bidder/Proposer is not in violation of any Oregon tax laws, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
3. Bidder/Proposer shall provide written notice to City within two business days of any change to its compliance with tax laws.

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Authorized Agent Signature

Date

Approved as to Form, Beaverton City Attorney – 04/04/2016

## **ATTACHMENT "A" – SAMPLE CONTRACT**

City of Beaverton

Professional Services Contract 3110-16  
To Provide Professional Services Relating To:

**THIS CONTRACT FOR PROFESSIONAL SERVICES** ("Contract") is entered into between the City of Beaverton, Oregon, located at 12725 SW Millikan Way, P.O. Box 4755, Beaverton, Oregon 97076 ("City") and \_\_\_\_\_ located at \_\_\_\_\_ ("Contractor"). The City's primary supervisor for this Contract ("Contract Administrator") is Luke Pelz, Sr. Transportation Planner, Community Development Department.

### **THE PARTIES HEREBY AGREE THAT:**

**1. EFFECTIVE DATE; DURATION.** This Contract shall become effective on the date this Contract has been signed by every party hereto and, approved by legal counsel for the City. Unless terminated or extended, this Contract shall expire when City accepts Contractor's completed performance or on November 30, 2018, whichever date occurs first.

**2. STATEMENT OF WORK.** In accordance with the terms and conditions of this Contract, Contractor shall perform the services as scheduled ("Work") and as set forth in Contractor's proposal dated \_\_\_\_\_, and incorporated herein by this reference, Exhibit A.

**3. CONTRACT DOCUMENTS.** In the event of a conflict between or among the terms of this instrument, any proposal and/or request for proposals, the following order of precedence shall prevail: (a) this instrument, (b) the request for proposal, (c) the proposal. Nothing herein shall be considered as an acceptance of the terms of a proposal if the terms of the proposal conflict or are otherwise incompatible with the express terms contained herein or in the City's request for proposal.

☒ City's Request for Proposal dated \_\_\_\_\_, is attached hereto as Exhibit "B" and incorporated herein by this reference. (*Attach RFP if Contract results from RFP solicitation.*)

Pursuant to ORS 279A.215, other public agencies may establish contracts or price agreements directly with the Contractor under the terms, conditions and prices of the original contract: ☐ Yes; ☐ No.

**4. CONSIDERATION.** City shall pay Contractor in progress payments based on monthly invoices from Contractor, together with a progress report containing a summary of the Work completed for which payment is requested for the "MAXIMUM, NOT-TO-EXCEED Amount" fee of \$ \_\_\_\_\_ as shown in Exhibit A. Payment shall be made within 30 days after receipt of Consultant's invoice.

**5. BILLING AND PAYMENT SCHEDULE.** At least thirty (30) days prior to due date of payment, Contractor shall prepare and submit to **THE CITY OF BEAVERTON, ATTENTION: LUKE PELZ, COMMUNITY DEVELOPMENT DEPARTMENT, PO BOX 4755, BEAVERTON, OREGON 97076**, an invoice of services rendered. Payment shall be made upon Contract Administrator's approval and acceptance of Contractor's completed Work described herein, whereupon Contract Administrator shall submit a payment request to City's Finance Department. If this Contract specifies an end product, an amount up to 10 percent of the total sum of money to be paid for the satisfactory

accomplishment of the Work may be withheld until all required Work is completed and accepted. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended. Interim payments to Contractor for partial completion of tasks or services may be made only upon prior written authorization of City. When made, interim payment shall release City from any further obligation for payment to Contractor for Work performed or expenses incurred as of the date of the invoice of services rendered.

**6. AVAILABILITY OF FUNDS.** City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

**7. ASSIGNMENT AND SUBCONTRACTORS.** Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate duties hereunder, either in whole or in part, without the City's prior written consent; provided, however, that money due to Contractor may be assigned, if the City is given written notice thereof, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the City. The City may rescind this Agreement if an assignment is made without the prior written consent of the City. The rights hereunder may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this agreement if transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. In no instance shall City's consent to an assignment of rights or delegation of duties relieve Contractor of any obligations hereunder. Any assignee, transferee or subcontractor shall be considered the agent of the Contractor and be bound to abide by all provisions of this Contract. Contractor, and its surety, if any, shall remain liable to City for complete performance of this Contract as if no such assignment, sale, subcontracting, disposal, transfer or delegation had occurred, unless City otherwise agrees in writing. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any. Contractor shall use the subcontractors identified in its proposals. Contractor shall not change subcontractor assignments without the prior written consent of the Purchasing Agent. City shall enforce all state-certified Minority Owned (MBE), Women Owned (WBE), Service-Disabled Veteran Owned (SDV) and Emerging Small Business (ESB), collectively known as MWSDV and ESB, subcontracting commitments submitted by the Contractor in its proposals. Failure to use the identified MWSDV and ESB subcontractors without prior written consent is a material breach of this Contract. If Contractor subcontracts with a state-certified MBE, WBE, SDV, or ESB, in whole or in part, because of the subcontractor's status as an MBE, WBE, SDV, or ESB, then Contractor shall require in its subcontract that the subcontractor remain certified throughout the term of this Contract. Contractor shall terminate the subcontract if the state-certified subcontractor fails to remain certified throughout the term of the Contract. Contractor shall then replace the terminated subcontractor with another state-certified subcontractor after receiving prior written consent from the Purchasing Agent.

**8. SUBCONTRACTOR PAYMENT REPORTING REQUIRED.** Contractor shall submit a Monthly Subcontractor Payment and Utilization Report (MUR), made part of this Contract by reference, reporting ALL subcontractors employed in the performance of this Contract. An electronic copy of

the MUR may be obtained by contacting the Purchasing Agent or at [www.BeavertonOregon.gov/Purchasing](http://www.BeavertonOregon.gov/Purchasing).

**9. TERMINATION.** The parties may effect termination of this Contract in the manners indicated:

- a. **Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. **City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' notice to Contractor.
- c. **City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as City may establish in such notice, upon the occurrence of any of the following events:
  - (i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
  - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;
  - (iii) Contractor no longer holds any license or certificate that is required to perform the work; or
  - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of City's notice, or such longer period as City may specify in such notice.
- d. **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' notice to City if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.
- e. **Remedies.** (i) In the event of termination pursuant to subsections a, b, c(i), c(ii) or d, of this Section, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by City, less previous amounts paid and any claim(s) which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand. (ii) In the event of termination pursuant to subsection c(iii) or c(iv) of this Section, City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection c(iii) or c(iv) of this Section, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection b of this Section.
- f. **Contractor's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the work.

**10. FORCE MAJEURE.** Neither party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods earthquakes, fires, acts of God, acts of the public enemy,

epidemic, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a party's reasonable control and without the fault or negligence of the party. The affected party, however, shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefor to the other party within 30 days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause. Delays under this paragraph shall not be the basis for additional compensation payable to the Contractor.

**11. MODIFICATION.** Any modification of the provisions of this Contract shall not be enforceable unless first reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City over the agreed sum or changes or modifies the Statement of Services or Delivery Schedule. Any such modification shall be effective only in the specific instance and for the specific purpose identified in the modification. In the event that Contractor receives any communication of whatsoever nature from City that Contractor contends gives rise to any modification of this Contract, Contractor shall, within 15 calendar days after receipt, make a written request for modification to City. Contractor's failure to submit such written request for modification in a timely manner is a basis upon which City may refuse to treat said communication as a modification. In connection with any modification to the Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment and other costs. If Contractor incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original Contract or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

**12. ACCESS TO RECORDS.** Contractor shall maintain all books, documents, papers and records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives, shall have access to Contractor's books, documents, papers, plans, writings and records that are directly pertinent to this Contract for the purpose of performing examinations and audits and making excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years from the date of Contract expiration, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by City. The state and federal governments and their duly authorized representatives are intended beneficiaries of the terms of this provision.

**13. COMPLIANCE WITH APPLICABLE LAWS.** Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and executive orders applicable to the Work to be performed under this Contract. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules or regulations shall not relieve Contractor of these obligations or the requirements of this Contract. Without limiting the foregoing, Contractor shall comply with all state and local tax laws, including, but not limited to, ORS 305.620 and ORS chapters 316, 317, and 318 during the term of this Contract. Contractor shall also comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, color, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279A,

279B and 279C relating to public contracts. The required contract conditions of ORS 279B.220, ORS 279B.225, ORS 279B.230 and ORS 279B.235 are hereby incorporated herein by this reference and made binding upon City and Contractor. Contractor shall safeguard consumer personal information pursuant to ORS 646A.600 to 646A.628 (the Oregon Consumer Identity Theft Protection Act). The parties shall comply with any state or federal law or regulation specific to the funding source that supports this Contract.

Contractor shall obtain a City of Beaverton business license as required by BC 7.01 prior to beginning work under this Contract. Contractor shall provide the business license number in the space provided on the signature page of this Contract. Additionally, Contractor shall pay all fees due under the Business License Law during the full term of this contract. Failure to be in full compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law.

**14. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES & WITHHOLDING.** The Work to be rendered under this Contract is that of an Independent Contractor. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. As used herein, "Independent Contractor" means that:

- a. Contractor is free from direction and control over the means and manner of providing labor or services, subject only to City's right to specify the desired results.
- b. Contractor is responsible for obtaining all required business registrations or professional occupational licenses.
- c. Contractor furnishes the tools or equipment necessary to perform the contracted labor or services.
- d. Contractor has the authority to hire and fire Contractor's employees.
- e. Contractor is registered under ORS chapter 701 to provide labor or services for which such registration is required.
- f. For labor and services performed as an Independent Contractor in the previous year, Contractor has either filed federal and state income tax returns in the name of Contractor's business or, in the alternative; Contractor has filed a Schedule C tax form as part of Contractor's personal income tax return.
- g. Contractor represents to the public that the labor or services described herein are to be provided by an independently established business.
- h. Payment to the Contractor is made upon completion or periodic completion of the performance required herein, or is made based on a periodic retainer.

Neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits (including, but not limited to, social security, workers' compensation and unemployment insurance benefits) that City provides its employees. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract. Unless Consultant is subject to backup withholding, City will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations.

**15. REPRESENTATIONS AND WARRANTIES; STANDARD OF CARE.** Contractor represents and warrants to City that:

- a. If Contractor is an entity (as opposed to a natural person), Contractor is duly organized and validly existing, in good standing under the laws of the jurisdiction of its organization and is duly qualified and authorized to do business and is in good standing in all jurisdictions where it is required to be so qualified.
- b. Contractor has the legal power and authority to:
  - i. Transact the business in which Contractor is engaged and presently proposes to engage and
  - ii. Execute, deliver and perform this Contract.
- c. Contractor has taken all necessary action to authorize the execution, delivery and performance of this Contract.
- d. Contractor has duly executed and delivered this Contract.
- e. The execution, delivery and performance of this Contract by Contractor do not:
  - i. Contravene any applicable provision of any law, statute, rule or regulation, or any order, writ, injunction or decree of any court or governmental entity.
  - ii. Conflict with or result in any breach of any agreement to which Contractor is a party, or
  - iii. Violate any provision of any organizational documents of Contractor if Contractor is an entity (as opposed to a natural person).
- f. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, deliver and performance by the Contractor of this Contract, other than those that have already been obtained.
- g. When executed and delivered, this Contract shall constitute the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except to the extent that the enforceability may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- h. Contractor has complied with all state and local tax laws, including, but not limited to, ORS 305.620 and ORS chapters 316, 317, and 318.
- i. If Contractor provides personal services under this Contract, the Work under this Contract shall be performed in a good and workmanlike manner;
- j. If Contractor provides professional services under this Contract, the Work under this Contract shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill and diligence ordinarily exercised by members of the profession currently practicing under similar conditions; and
- k. Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

The warranties as to standard of care set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

**16. OWNERSHIP OF WORK PRODUCT.** Contractor is an independent contractor for purposes of determining whether Contractor's work product is "work made for hire" under provisions of the U.S. Copyright Act, 17 U.S.C. §§ 101 - 810. If Contractor's work meets the definition of a work made for hire by an independent contractor, then the work shall be considered a work made for hire and the City shall be deemed the work's author. If Contractor's work does not meet the definition of work made for hire by an independent contractor, then Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising

from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor waives and releases all rights relating to the use of the work described in or encompassed by the Statement of Work of this Contract, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the scope of the Statement of Work of this Contract shall be without liability to Contractor. If Contractor is an architect providing professional architectural services, any plans, drawings and other work product produced within the scope of work of this contract are the property of the Contractor; by execution of this Contract, Contractor grants the City an exclusive and irrevocable license to use that work product.

**17. INDEMNITY.** With regard to the Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below in this Section, the Contractor hereby releases and shall indemnify, defend, and hold harmless the City, its officials, employees, agents and volunteers from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorney fees and costs at trial and on appeal, that arise from or are connected with or are directly or indirectly caused or claimed to be caused in whole or in part by the fault or negligent, reckless or willful acts or omissions of the Contractor and/or its agents, employees or subcontractors in performing Work herein; provided, however, that the Contractor's duty to release, indemnify and hold harmless shall not include any liability arising from the established sole negligence or willful misconduct of the City, its officials, employees, agents and volunteers.

With regard to the Contractor's performance of professional services, Contractor hereby releases and shall indemnify, defend, and hold harmless the City, its officials, employees, agents and volunteers from and against any and all claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities of any kind or nature, including all expenses of investigating and defending against same, including reasonable attorney fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its agents, employees or subcontractors associated with the Work.

**18. INSURANCE.** Contractor, at Contractor's own expense, shall procure and maintain in full force and effect for the duration of Contractor's Work under this Contract the types and coverage amounts of insurance conforming to these minimum requirements:

**WORKERS' COMPENSATION INSURANCE  
AND EMPLOYER LIABILITY INSURANCE  
Required For All Workers Who Are Not Exempt**

Contractor shall submit proof of Workers' Compensation Insurance for all persons who are "workers" as defined in ORS 656.005. A person who works under the Contractor's direction and control or the Contractor's right to control is a person for whom the Contractor must show proof of coverage unless the "worker" is a "non-subject worker" exempt from workers compensation insurance requirements under ORS 656.027. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, or show proof of extraterritorial coverage as per ORS 656.126. All Contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain in full force and effect for the duration of Contractor's or subcontractor's Work under this Contract Employer Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000 each employee per accident for bodily injury by accident or disease.

Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with this Contract provide Oregon workers' compensation coverage for all their subject workers as required by ORS 656.017 and shall keep on file a certificate of insurance from each subcontractor and anyone else directly employed by either the Contractor or subcontractor.

The Contractor should consult with its own insurance agent to determine if any person who is engaged by Contractor to perform any services under this Contract is a "subject worker" for whom Contractor must provide workers compensation insurance. Contractor may declare itself exempt from this insurance requirement if it is not an "employer" who contracts to pay remuneration for and secures the right to direct and control the services of any person, as per ORS 656.006(13), to perform such services. A Contractor who makes that declaration and who does not provide that insurance may be deemed a non-complying employer under Oregon law. **A contractor who makes that declaration hereby agrees to hold City harmless from and indemnify City against any and all claims for compensation benefits made against the City by subject workers employed by the Contractor to do any of the work of the Contract.** A Contractor who declares itself exempt from providing the Workers Compensation insurance coverage otherwise required by this Contract shall make that declaration in signed and dated writing to be attached to this Contract.

#### COMMERCIAL GENERAL LIABILITY INSURANCE

☒ Required; ☐ Not Required.

Commercial general liability insurance with a combined single limit, or the equivalent, of not less than ☒ \$1,000,000; ☐ \$2,000,000; or ☐ \$5,000,000 per occurrence with a ☒ \$2,000,000; ☐ \$4,000,000; or ☐ \$10,000,000 annual aggregate limit, covering, but not limited to, liability for personal injury and property damage and aggregate limits shall apply on a per project basis. The policy shall be written on an occurrence basis on ISO Form CG 00 01 (Commercial General Liability Coverage Form), or its equivalent, and shall include contractual liability covering the assumption of the tort liability (including defense costs) of another party by written contract for both ongoing operations and completed operations under this contract. The City of Beaverton and its officials, employees, agents and volunteers shall be named as additional insureds under ISO Form CG 2010 (Additional Insureds – Owners, Lessees or Contractors – Scheduled Person or Organization), or its equivalent, and CG 2037 (Additional Insured – Owners Lessees or Contractors – Completed Operations), or its equivalent, with respect to the Work to be provided under this Contract. The commercial general liability insurance coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured and is primary and non-contributory with any City insurance or self-insurance program.

#### AUTOMOBILE LIABILITY INSURANCE

☒ Required; ☐ Not Required.

Automobile Liability Insurance on ISO Form CA 00 01 (Business Auto Coverage), or its equivalent, with an each accident limit of not less than ☒ \$1,000,000, or ☐ \$2,000,000 covering, but not limited to, liability for bodily injury and property damage, for "any auto," including owned, non-owned and hired autos used in connection with the performance of the Work. The City of Beaverton and its officials, employees, agents and volunteers shall be named additional insureds under Endorsement CA 20 48 (Designated Insured), or its equivalent. The automobile liability insurance required by this Contract is primary to and non-contributory with any City insurance or self-insurance program; any deductible cannot exceed \$5000. If Contractor is declaring Contractor excused from any requirement to provide Automobile Liability Insurance coverage because Contractor does not use an automobile in connection with Work under this Contract, Contractor may initial here: \_\_\_\_\_; otherwise Contractor shall procure and maintain the required insurance.

### **PROFESSIONAL LIABILITY INSURANCE**

☒ **REQUIRED;** ☐ **NOT REQUIRED.**

Professional Liability Insurance with a combined single limit, or the equivalent, of not less than ☒ \$2,000,000; or ☐ \$5,000,000 per claim with a ☒ \$2,000,000 or ☐ \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and economic loss. Contractor shall be responsible for any deductible amounts. If Contractor proposes using subcontractors, in addition to any other requirements of this Contract, City may require subcontractors to provide professional liability insurance of similar type and coverage amount. Contractor, at Contractor's own expense, shall maintain the Professional Liability Insurance in full force for not less 24 months following completion of this Contract. The Professional Liability coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. Coverage must be in effect prior to the commencement of the performance of this Contract. Contractor shall furnish continuous "claims made" liability coverage for 24 months following Contract completion. Certification of "tail" coverage for 24 months following Contract completion in lieu of continuous "claims made" liability coverage is acceptable if "claims made" policy expires or is cancelled following Contract completion.

**19. INSURANCE CERTIFICATION; OTHER INSURANCE REQUIREMENTS.** Before Contractor commences Work under this Contract, Contractor shall furnish City, through its Risk Manager, with acceptable certificates evidencing the types, amounts and issuers of insurance coverage meeting the minimum requirements of this Contract. The certificate shall specify all of the parties who are Additional Insureds. If a certificate of insurance coverage is unavailable from a particular insurer, alternative proof of insurance coverage acceptable to City shall be arranged. Renewal certificates of insurance shall be furnished no later than 15 days before the expiration of the policy. Any deductibles or self-insured retentions must be stated on the certificate of insurance, which shall be sent to and approved by City's Risk Manager in advance to commencement of Work under this contract.

In all instances concerning all forms of insurance required by this Contract:

- a. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to the Oregon Surplus Lines Law (ORS 735.400 to 735.495);
- b. Upon request, complete copies of insurance policies, trust agreements, etc. shall be provided to City;
- c. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance amounts;
- d. Umbrella or Excess Liability Insurance may be used to achieve the above minimum liability limits, so long as policy is endorsed to state it is "As Broad as Primary Policy." If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required;
- e. Contractor shall provide City not less than 30 days written notice of Contractor's intent to cancel, terminate or make any material change affecting required insurance coverage;
- f. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge

- of any such failure, Contractor shall immediately notify the City and immediately replace such insurance with an insurer meeting the requirements
- g. Except for Professional Liability Insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and Financial Performance Rating of 7 or better. Contractor's Professional Liability Insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at Contractor's own expense, maintains the Professional Liability Insurance in full force for not less 24 months following completion of this Contract; and
  - h. The commercial general liability insurance and automobile liability insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any commercial general liability insurance maintained by the City shall be excess of and shall not contribute with the commercial general liability insurance provided by Contractor and its subcontractors.

City reserves the right to review the types of coverages and limits of insurance required herein from time to time. In the event that City changes its insurance requirements after this Contract has been signed, City will provide notice to Contractor of the new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor will be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

**20. LIMITATION OF LIABILITIES.** Neither party shall be liable in contract, tort, strict liability, warranty or otherwise for (i) any special, indirect, incidental, consequential or non-economic damages resulting from or in any way related to this Contract, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system, or (ii) any damages of any sort whatsoever arising solely from the termination of this Contract in accordance with its terms; provided, however, the provision of this paragraph do not apply to liability arising under or relating to Section 9(e)(ii)(Termination) or Section 15 (Representations and Warranties; Standard of Care).

**21. NOTICE.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or City at the address or number as identified herein above, or to such other addresses or numbers as either party from time to time may designate in writing. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**22. NO THIRD PARTY BENEFICIARIES.** City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**23. CONFLICT OF INTEREST.** Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, will or has received any

remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

**24. HAZARD COMMUNICATION.** To the extent that Contractor provides City with any goods that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use, Contractor shall provide City with a Material Safety Data Sheet for any goods provided under this Contract that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor shall label, tag, or mark such goods.

**25. DISCLOSURE OF SOCIAL SECURITY NUMBER.** Contractor must provide Contractor's Social Security Number (SSN) unless Contractor provides an Employer Identification Number (EIN) or other valid form of Taxpayer Identification Number (TIN). SSN is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). SSN provided pursuant to this authority will be used for the administration of state, federal and local tax laws. Contractor's TIN will be reported to the Internal Revenue Service (IRS) under the name and TIN submitted. (See IRS 1099 for more information.) Information not matching IRS records may subject Contractor to backup withholding.

**26. SURVIVAL.** Expiration shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties and guarantees made in, required by or given by the Contractor in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to the Contractor, completion of the Work and termination or completion of the Contract.

**27. TIME IS OF THE ESSENCE.** Time is of the essence of this Contract.

**28. GOVERNING LAW.** This Contract is entered into and is to be performed in Oregon and shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Washington County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

**29. CAPTIONS.** The captions or headings in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

**30. COUNTERPARTS.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original. The exchange of signed copies of this Contract by electronic mail in Portable Document Format (PDF) or its equivalent shall constitute effective execution and delivery of this Contract. Signatures on the copies sent through electronic mail shall be deemed to be their original signatures for all purposes.

**31. MERGER.** This Contract (including, to the extent provided herein, any attached exhibits) constitutes the entire and integrated agreement between the parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. There are no understandings, agreements, representations, oral or written, not specified herein regarding this agreement.

**32. WAIVER.** City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Contract.

**33. SEVERABILITY.** If any term or provision, or portions thereof, of this Contract is declared by an arbiter or a court of competent jurisdiction to be illegal, invalid, void, or otherwise unenforceable, each such term or provision shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable; all other provisions and requirements of this Contract shall remain in full force and effect insofar as possible to preserve the lawful anticipated benefits of this Contract to the parties.

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**Certification**

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws; (c) Contractor is an independent Contractor as defined in ORS 670.600; and (d) the Contractor data set forth herein is true and accurate.

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The parties, by their signature below, acknowledge having read and understood the Contract and agree to be bound by its terms and conditions.

**AGREED TO BY THE PARTIES HERETO:**

**CITY OF BEAVERTON, OREGON**

BY: \_\_\_\_\_  
Mayor

DATE: \_\_\_\_\_

Approved as to legal sufficiency:

\_\_\_\_\_

**CONTRACTOR**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

City of Beaverton Business License No.: \_\_\_\_\_

